

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Chief Patrick Lynn (954) 693-8320

PREPARED BY: Danny Stallone, Code Compliance Official/af

SUBJECT: Resolution

AFFECTED DISTRICT: All

ITEM REQUEST: **Schedule for Council Meeting**

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE DAVIE TOWN COUNCIL AMENDING CHAPTER 6 OF THE CODE OF THE TOWN OF DAVIE ENTITLED "CODE ENFORCEMENT SPECIAL MASTER," BY CREATING A NEW SECTION 6-9.2, ENTITLED "ABANDONED REAL PROPERTY REGISTRATION, ENFORCEMENT AND ABATEMENT PROCEDURES."

REPORT IN BRIEF: The Town is amending Chapter 6 of the Code of the Town of Davie entitled "Code Enforcement Special Master," by creating a new section 6-9.2, entitled "Abandoned Real Property Registration, Enforcement and Abatement Procedures." This will clarify the procedures regulating vacant, blighted, unsecured and abandoned residential structures, providing for enforcement abatement of violations, penalties for failure to comply, to recover the fines, costs and attorney's fees as a superior priority lien; containing a severability and conflict cause respectively.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

RECOMMENDATION(S): Motion to approve Ordinance

Attachment(s): Ordinance

ORDINANCE _____

AN ORDINANCE OF THE DAVIE TOWN COUNCIL AMENDING CHAPTER 6 OF THE CODE OF THE TOWN OF DAVIE ENTITLED "CODE ENFORCEMENT SPECIAL MASTER," BY CREATING A NEW SECTION 6-9.2, ENTITLED "ABANDONED REAL PROPERTY REGISTRATION, ENFORCEMENT AND ABATEMENT PROCEDURES."

WHEREAS, the Town Council of the Town of Davie (hereinafter referred to as the "Town") recognizes a problem due to an increase in the number of vacant and abandoned properties located throughout the Town; and

WHEREAS, the presence of vacant, abandoned residences can lead to neighborhood decline; and

WHEREAS, the presence of vacant, abandoned residences can create an attractive public nuisance; and

WHEREAS, the presence of vacant abandoned residences can contribute to lower property values; and

WHEREAS, the presence of vacant abandoned residences can discourage potential buyers from purchasing a home adjacent to or in neighborhoods with vacant abandoned residences; and

WHEREAS, in many instances the lenders and trustees fail to adequately maintain and secure these vacant residences; and

WHEREAS, the Town Council has an interest in protecting its residential neighborhoods from decline and devaluation caused by vacant and abandoned properties; and

WHEREAS, the Town Council concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties located within the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. AUTHORITY. The Town of Davie has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida.

SECTION 2. ADOPTION. Section 6-9.2 of Chapter 6 of the Code of Ordinances is hereby adopted as follows:

Chapter 6-9.2. ABANDONED REAL PROPERTY REGISTRATION, ENFORCEMENT AND ABATEMENT PROCEDURES.

Sec. 6-9.2 (1). Purpose and intent.

It is the purpose and intent of the town to establish a process to address the abandoned real property located within the town. It is the town's further intent to specifically establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties. All such abandoned real property registration shall take place upon a form for registration to be provided by the Town.

Sec. 6-9.2 (2). Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property means any real property and/or accompanying structure(s) found thereon that are vacant and under a current notice of default and/or notice of lis pendens and/or notice of mortgagee's sale by the lender or a pending tax assessors lien sale and/or properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage

involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Abandoned structure means any structure or building, or portion thereof, which may have multiple town code or building code violations, or may be illegally occupied and is:

- (a) Unsecured; or,
- (b) Nuisance; or,
- (c) Eyesore; or,
- (d) Vacant for a period of time over thirty (30) days, beginning from the date of the town inspection and during which time the enforcement officer / code inspector has issued a citation, or notice of violation and a special magistrate has issued an order to correct violations or abate a nuisance or eyesore; or,
- (e) Vacant for a period of time over thirty (30) days without evidence of functioning water, electric and/or gas utilities; or,
- (f) Boarded up, partially destroyed, or partially constructed or incomplete after the building permit authorizing its construction has expired; or,
- (g) Accessible to trespassers, criminals or other unauthorized persons; or
- (h) State or condition identified herein as evidence of vacancy.

Accessible property means a property that is accessible through a compromised/breached gate, fence, wall, etc., to trespassers, criminals or other unauthorized persons.

Accessible structure means a structure/building that is unsecured and/or breached in such a way as to allow access to the interior space by trespassers, criminals or other unauthorized persons.

Enforcement officer means any code inspector, code enforcement officer, fulltime law enforcement officer, building official or building inspector, fire inspector, or zoning inspector employed by the town.

Eyesore shall mean, for the purposes of this section, any condition, including but not limited to overgrown grass, weeds, unsanitary or unsecured swimming pool, unkempt or unsecured exterior walls, roof, windows or doors, at or upon a residence, building, structure or real property, which in its current state is not in conformity with the nearby residences, buildings, structures or real property, and due to those conditions is so deleterious as to devalue the properties in the vicinity thereof.

Evidence of vacancy means any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, stagnant and unsanitary pool water, nonfunctioning electric,

water and/or gas utilities, accumulation of abandoned real and/or personal property, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

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Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

Nuisance means, for the purposes of this section, any condition, including but not limited to an abandoned, unsafe, unsecured residence, building, structure, or real property with code violations that constitute a menace to life, property, public health, or the public welfare, or create a fire hazard; or, any conditions which may be injurious to the health, safety and welfare of the public; or, any conditions that constitute an attractive nuisance or otherwise endanger the public's safety while in the vicinity thereof.

Owner means a person, persons or legal entity owning or controlling an interest, including but not limited to, real or contingent interests in real property, or an agent of such person or legal entity, including but not limited to those shown in the Public Records of Broward County Florida; the Broward County Property Appraiser's Office; identified on the Abandoned Residential Property registration form; holder of an unrecorded deed; a mortgagee or vendee; a mortgagor or vendor; assignee of rents; receiver; executor; trustee; lessee; or firm or corporation in control of the freehold of the premises or lesser stated therein. This term shall also apply to the person, or legal entity or agent responsible for the construction, maintenance and operation of the building, facilities or premises involved, the owner's duly authorized agent, a purchaser, devisee, fiduciary, property holder or any other person, or legal entity having a vested or contingent interest. Any such person, legal entity or any party having ownership interest pursuant to Florida statute shall have a joint and several obligations for compliance with the provisions of this chapter.

Private property means all lands and improvements other than public lands and improvements.

Property management company means a local property manager, property maintenance company or similar entity responsible for the maintenance of abandoned real property.

Public property means canals, all waterways, lands and improvements owned by a governmental body or any governmental agency including but not limited to easements and rights-of-way, but excluding the campus of any institution of the state university system.

Residential building means any improved real property, or portion thereof, situated in the town, designed or permitted to be used for dwelling purposes, and shall include the buildings and structures located on such improved real property.

Vacant means any building/structure that is not legally occupied, unattended, and is not actively used as a place of residence or business.

Sec. 6-9.2 (3). Applicability.

This chapter shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the town above and beyond any other state, county and/or local provisions for same.

Sec. 6-9.2 (4). Penalties.

Any person who shall violate the provisions of this chapter shall, upon conviction, be punished as provided in section 1-9 and 6.9 of the Code of Ordinances and pursuant to the Florida Statutes chapter 162, as applicable.

Sec. 6-9.2 (5). Public nuisance.

All abandoned real property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the town.

Sec. 6-9.2 (6). Registration of abandoned real property.

- (a) Any mortgagee who holds a mortgage on real property located within the town shall perform an inspection of the property that is the security for the mortgage, upon issuance of a notice of lis pendens and/or default by the mortgagor, prior to the issuance of a notice of default. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned and the mortgagee shall, within ten (10) days of the inspection, register the property with the town administrator, or his or her designee, on a form provided by the town. A registration is required for each vacant property.
- (b) If the property is occupied but remains in default, it shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall, within ten (10) days of that inspection, register the property with the town administrator, or his or her designee, on a form provided by the town.
- (c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee, facsimile number and e-mail address and, in the case of a corporation or out-of-area mortgagee, the local property management company responsible for the security and maintenance of the property.
- (d) A nonrefundable annual registration fee in the amount of one hundred fifty dollars (\$150.00), per property, shall accompany the registration form(s); the annual registration fee shall correspond to the fiscal year of the town and renewal of the registration shall be performed prior to October 1st of any year; the renewal of the registration with its accompanying fee shall be the

responsibility of the mortgagee and a failure to do so in a timely manner shall be subject to code enforcement action as provided in section 1-9 and 6.9 of the Code of Ordinances and as pursuant to Florida statutes chapter 162.

- (e) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.
- (f) Properties subject to this section shall remain under the annual registration requirement, security and maintenance standards of this section as long as they remain vacant.
- (g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration within ten (10) days of the change to the town administrator or his or her designee.

Sec. 6-9.2 (7). Maintenance requirements and abatement procedures.

- (a) Properties subject to this chapter shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state, or local law, discarded personal items included, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.
- (b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure; enforcement action shall be pursuant to this code and section 16-55.
- (c) Front, side, and rear yard landscaping shall be maintained in accordance with the town's standard at the time registration was required.
- (d) Landscape shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Landscape shall not include weeds, gravel, broken concrete, asphalt or similar material.
- (e) Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing of required landscape and removal of all landscape trimmings, garbage, debris and other derelict property or material found on the property.
- (f) Pools and spas shall be maintained in a sanitary manner. Sanitary pool water means that it shall remain free and clear of pollutants and debris, and free of mosquito breeding or vermin infestation. Pools and spas shall comply with the enclosure requirements of the Town Code of Ordinances and Florida Building Code, as amended from time to time.
- (g) Failure of the mortgagee and/or property owner of record to properly maintain the property may result in a violation of the Town Code and issuance of a citation or notice of violation/notice of hearing by a town enforcement officer / code inspector. Pursuant to a finding and

determination by the town's special magistrate, the town may take the necessary action to ensure compliance with this section.

- (h) If in the judgment of the town enforcement officer / code inspector the property fails to comply with any violations noted hereinabove, then s/he shall immediately notify the mortgagee and/or property owner of record, by certified mail, return receipt requested, of the failure to comply with this section and shall advise the mortgagee and / or property owner that compliance must be effected within seven (7) days after receipt of notice. Notice shall be deemed received by the mortgagee and / or property owner five (5) days after mailing provided that the notice is mailed to the address used by the tax collector of Broward County, Florida for mailing county real estate tax bills for the property. Notice shall be deemed received by the mortgagee and / or property owner five (5) days after mailing provided that the notice is mailed to the property address. Failure to comply with the requirements of the notice shall be unlawful and shall be subject to penalty as provided in section 1-9 and 6.9 of this Code and pursuant to the Florida Statutes chapter 162.
- (i) In addition to the penalty hereinabove provided, the town may, after having given notice as hereinabove prescribed (which notice may refer to or advise of the provisions of this paragraph), proceed to abate any code violations that constitute a menace to life, property, public health, or the public welfare, or creates a fire hazard, thereby constituting a nuisance upon such real property. The cost of abatement, together with all costs and expenses of collection, including a reasonable attorney's fee shall constitute a lien on such property. The lien hereby assessed shall be superior to all other liens and mortgages, except for tax liens and mortgages recorded prior to the effective date of this ordinance. The town clerk shall record notice of the lien among the public records of Broward County, Florida. The town may proceed to collect the lien by foreclosure or otherwise. Sale pursuant to a decree of foreclosure may be made by the clerk of the court which enters the decree in the same manner as prescribed for mortgage foreclosures.
- (j) In addition to the provisions above, the town council may authorize the town attorney to take legal action to force the mortgagee and / or property owner to comply with the requirements of this section. If the town shall prevail in any action pursuant hereto, it shall be entitled to recover a reasonable attorney's fee which shall be taxed as part of its costs.

Sec. 6-9.2 (8). Security requirements.

- (a) Properties subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- (b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property and/or structure. Broken windows shall be secured by replacement, re-glazing or boarding of the window so as to meet all applicable town codes and not present an eyesore to the community.

- (c) If the property is owned by a corporation and/or out of area mortgagee, a local property management company shall be contracted to perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws.
- (d) The property shall be posted with the name, address and twenty-four (24) hour contact phone number of the local property management company. The posted sign shall be no less than eight-inches by ten-inches or any larger than four (4) square feet. All written information thereupon shall be clear, legible and updated as required.

The posting shall contain the following language:

THIS PROPERTY IS MANAGED BY: *NAME & ADDRESS*

TO REPORT PROBLEMS OR CONCERNS CALL: *DIRECT PHONE NUMBER*

The posting shall be placed on the interior of a window facing the street to the front of the property so it is visible, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible or, if no such area exists, on a stake of sufficient size to support the posting in a location as close as possible to the main door entrance of the property. Exterior posting shall be constructed of and printed with weather-resistant materials.

- (e) The local property management company shall inspect the property on a bi-weekly basis to ensure that the property is in compliance with this chapter. Upon the request of the town, the local property management company shall provide a copy of the inspection reports to the code compliance division.
- (f) Failure of the mortgagee and/or property owner of record to properly maintain the property is a violation of the town code and the issuance of a citation or notice of violation/notice of hearing by a town enforcement officer / code inspector shall occur. The town may take the appropriate and necessary corrective action to ensure compliance with this section, or pursuant to a finding and determination by the town's special magistrate proceed with the enforcement of an Order pursuant to the Florida Statutes chapter 162.
- (g) If in the judgment of the town enforcement officer / code inspector the property fails to comply with any violations noted hereinabove, then s/he shall immediately notify the mortgagee and/or property owner of record, by certified mail, return receipt requested, of the failure to comply with this section and shall advise the mortgagee and / or property owner that compliance must be effected within seven (7) days after receipt of notice. Notice shall be deemed received by the mortgagee and / or property owner five (5) days after mailing provided that the notice is mailed to the address used by the tax collector of Broward County, Florida for mailing county real estate tax bills for the property. Notice shall be deemed received by the

mortgagee and / or property owner five (5) days after mailing provided that the notice is mailed to the property address. Failure to comply with the requirements of the notice shall be unlawful and shall be subject to penalties as provided in section 1-9 and 6.9 of this code and pursuant to the Florida Statutes chapter 162.

- (h) In addition to the penalty hereinabove provided, the town may, after having given notice as hereinabove prescribed (which notice may refer to or advise of the provisions of this paragraph), proceed to abate any code violations that constitute a menace to life, property, public health, or the public welfare, or creates a fire hazard, thereby constituting a nuisance upon such real property. The cost of abatement, together with all costs and expenses of collection, including a reasonable attorney's fee shall constitute a lien on such property. The lien hereby assessed shall be superior to all other liens and mortgages, except for tax liens and mortgages recorded prior to the effective date of this ordinance. The town clerk shall record notice of the lien among the public records of Broward County, Florida. The town may proceed to collect the lien by foreclosure or otherwise. Sale pursuant to a decree of foreclosure may be made by the clerk of the court which enters the decree in the same manner as prescribed for mortgage foreclosures.
- (i) In addition to the provisions above, the town council may authorize the town attorney to take legal action to force the mortgagee and / or property owner to comply with the requirements of this section. If the town shall prevail in any action pursuant hereto, it shall be entitled to recover a reasonable attorney's fee which shall be taxed as part of its costs.

Sec. 6-9.2 (9). Opposing, obstructing enforcement officer / code inspector: penalty.

Whoever opposes, obstructs or resists any enforcement officer / code inspector other town employee or town agents authorized by the town administrator, or enforcement officer / code inspector in the discharge of duties as provided in this chapter, upon conviction shall be punished as provided by law, and as found in section 1-9.

Sec. 6-9.2 (10). Granting immunity from prosecution to enforcement officer / code inspector / other town employees and town agents.

Any enforcement officer / code inspector, other town employee or town agents authorized by the town administrator, or enforcement officer / code inspector shall be immune from prosecution, civil or criminal, for reasonable, good faith entry upon the subject abandoned real property while in the discharge of duties imposed by this chapter.

Sec. 6-9.2 (11). Additional authority.

The town administrator, or his or her designee, shall have authority to require the mortgagee and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all door, window or other openings in a manner

subject to town approval, employment of an on-site security guard, fire watch or other measures as may be reasonably required to help prevent further decline of the property and hazards to the community.

Sec. 6-9.2 (12). Adoption of rules; expenditure of funds; declaration of town purpose.

The town administrator, consistent with his/her duties and authorities under the Town Charter, including those duties and authorities relating to emergency situations, is authorized and empowered to adopt rules and regulations and expend town funds as may be reasonably necessary and available to carry out the terms of this chapter, the expenditure of such funds being declared a proper town purpose.

Sec. 6-9.2 (13). Enforcement.

- (a) Failure to comply with the requirements of this ordinance shall result in a violation of the Town Code and issuance of a citation or a notice of violation / notice of hearing by a town enforcement officer / code inspector pursuant to Florida statutes chapter 162, or any other legal remedy available to the town. In addition to said enforcement, and pursuant to a finding and determination by the town's special magistrate, the town may take the necessary action to ensure compliance with this section and recover all such costs and attorney's fees accrued thereby and such costs and fees shall be recorded as a lien in favor of the Town in the Public Records of Broward County.
- (b) If in the judgment of the town enforcement officer / code inspector, the property fails to comply with any violations noted hereinabove, then s/he shall immediately notify the mortgagee and/or property owner of record, by certified mail, return receipt requested, of the failure to comply with this section and shall advise the mortgagee and/or property owner that compliance must be effected within seven (7) days after receipt of notice. Notice shall be deemed received by the mortgagee and/or property owner five (5) days after mailing provided that the notice is mailed to the address used by the tax collector of Broward County, Florida for mailing county real estate tax bills for the property. Notice shall be deemed received by the mortgagee and/or property owner five (5) days after mailing provided that the notice is mailed to the property address. Failure to comply with the requirements of the notice shall be unlawful and shall be subject to penalty as provided in section 1-9 and 6.9 of this code and pursuant to the Florida Statutes chapter 162.
- (c) In addition to the penalty hereinabove provided, the town may, after having given notice as hereinabove prescribed (which notice may refer to or advise of the provisions of this paragraph), proceed to abate any code violations that constitute a menace to life, property, public health, or the public welfare, or creates a fire hazard, thereby constituting a nuisance upon such real property. The cost of enforcement and / or abatement, together with all costs and expenses of collection, including a reasonable attorney's fee shall constitute a lien on such property. The lien hereby assessed shall be superior to all other liens and mortgages, except for tax liens and mortgages recorded prior to the effective date of this ordinance. The town clerk shall record notice of the lien among the public records of Broward County, Florida. The town may proceed to collect the lien by foreclosure or otherwise. Sale

pursuant to a decree of foreclosure may be made by the clerk of the court which enters the decree in the same manner as prescribed for mortgage foreclosures.

- (d) In addition to the provisions above, the town council may authorize the town attorney to take legal action to force the mortgagee and / or property owner to comply with the requirements of this section. If the town shall prevail in any action pursuant hereto, it shall be entitled to recover a reasonable attorney's fee which shall be taxed as part of its costs.

SECTION 3. Conflict. All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

SECTION 5. Codification. It is the intention of the Town Council of the Town of Davie, FL

and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the

Code of Ordinances of the Town of Davie, Florida; that the Sections of this Ordinance may be

re-numbered or re-lettered to accomplish such intention; that the word "*Ordinance*" may be changed to

"*Section*," "*Article*," or other appropriate word.

SECTION 6. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS ____ DAY OF _____, 2008

PASSED ON SECOND READING THIS ____ DAY OF _____, 2009

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2009